

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|  |   |                      |
|--|---|----------------------|
| In the Matter of                                   | ) |                      |
|  | ) |                      |
| Amendment of Part 2 of the Commission's Rules      | ) |                      |
| to Allocate Spectrum Below 3 GHz for Mobile        | ) | ET Docket No. 00-258 |
| and Fixed Services to Support the Introduction of  | ) |                      |
| New Advanced Wireless Services, Including Third    | ) |                      |
| Generation Wireless Systems                        | ) |                      |
|  | ) |                      |
| Amendment of Section 2.106 of the Commission's     | ) |                      |
| Rules to Allocate Spectrum at 2 GHz for Use        | ) | ET Docket No. 95-18  |
| by the Mobile-Satellite Service                    | ) |                      |
|  | ) |                      |
| The Establishment of Policies and Service Rules    | ) | IB Docket No. 99-81  |
| for the Mobile-Satellite Service in the 2 GHz Band | ) |                      |
|  | ) |                      |
| Flexibility for Delivery of Communications by      | ) |                      |
| Mobile Satellite Service Providers in the 2 GHz    | ) | IB Docket No. 01-185 |
| Band, the L-Band, and the 1.6/2.4 GHz Band         | ) |                      |
|  | ) |                      |
| To: The Commission                                 | ) |                      |

**JOINT REPLY COMMENTS OF  
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC. AND  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**INTRODUCTION**

A number of facts emerge undisputed from the comments submitted in the above-captioned proceedings. First, broadcasters intensively use the seven 2 GHz Broadcast Auxiliary Services ("BAS") channels in local markets and across market boundaries to transmit live, "at the scene" news reports, to provide special events coverage, and to relay programming to remote communities in rural markets.<sup>1</sup>

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<sup>1</sup> Joint Comments of the Association for Maximum Service Television, Inc. and the National Association of Broadcasters in ET Docket Nos. 00-258 & 95-18 and IB Docket Nos. 99-81 & (continued...)

Second, Mobile Satellite Services (“MSS”), for which BAS services are being relocated, admit that they are unlikely to use efficiently the full amount of 2 GHz spectrum that has been allocated to them in the manner the Commission envisioned when it made the allocation.<sup>2</sup> The proposal presented by New ICO Global Communications (“New ICO”) demonstrates that the fundamental basis for allocating spectrum for MSS – to provide wireless service to rural and remote areas – cannot now be achieved by MSS operators. MSS as originally envisioned is not financially viable and what MSS operators now clearly want is to provide a terrestrial wireless service to major markets under the guise of their “ancillary terrestrial component” (“ATC”). The metamorphosis of MSS from a satellite service to rural and remote areas into a major market wireless provider is entirely at odds with the theory and structure of the BAS relocation scheme. New ICO claims that its ability to provide service to rural areas provides a public interest justification for allowing it to provide terrestrial telephone service in urban areas and for minimizing the costs it will have to shoulder to relocate BAS incumbents.<sup>3</sup> The lengthy relocation process New ICO seeks to preserve, however, is inconsistent with its promises of service to rural Americans. Under the existing relocation schedule, MSS service could only be offered in the 30 largest markets during the first stage of

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10-185, at 3-4 (Oct. 22, 2001) (Joint Broadcasters Comments); Comments of the Society of Broadcast Engineers, Inc. in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 2 (Oct. 19, 2001) (SBE Comments).

<sup>2</sup> See, e.g., Comments of New ICO Global Communications in IB Docket No. 01-185 and ET Docket No. 95-18, at 15-16 (Oct. 22, 2001) (“In a nutshell, traditional MSS architectures have a difficult time providing in-building and urban coverage . . . .”) (New ICO 01-185 Comments); see also Comments of Verizon Wireless in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 12 n.31 (Oct. 19, 2001) (“[R]ecent filings by MSS licensees, as well as recent business failures, raise substantial questions as to the present and future viability of MSS.”) (Verizon Wireless Comments).

<sup>3</sup> See New ICO 01-185 Comments at 19-21, 50-51.

relocation. Rural service could only begin years later after the Phase I relocation has been completed. Thus, permitting New ICO to avoid relocation expenses while changing the fundamental nature of its licensed service will not in fact provide any new service to rural areas.

Third, if some MSS spectrum is reallocated to terrestrial wireless services and/or the remaining MSS spectrum is used for integrated satellite and ancillary terrestrial services, the relocation of BAS incumbents will have to take place more rapidly than the current BAS relocation plan contemplates.<sup>4</sup> With terrestrial use by either advanced wireless or MSS operators, the justification underlying the two-step, phased relocation of BAS operations no longer exists.

In light of these facts, the Association for Maximum Service Television, Inc. (“MSTV”) and the National Association of Broadcasters (“NAB”)<sup>5</sup> (collectively, “Joint Broadcasters”) urge the Commission to take the only sensible course to ensure that MSS spectrum is used efficiently and that essential BAS services are uninterrupted. First, the current BAS relocation process, which is pegged to the roll-out of an MSS service that is likely to be drastically revamped, should be tolled pending resolution of the proposals presented in these

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<sup>4</sup> See *infra* § I.

<sup>5</sup> MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks that serves and represents the American broadcast industry. MSTV and NAB jointly filed comments in these proceedings on October 22, 2001. Also, NAB and MSTV have pending a petition for partial reconsideration of the current BAS relocation plan. See *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Petition for Partial Reconsideration of the National Association of Broadcasters and the Association for Maximum Service Television, Inc., ET Docket No. 95-18 (Sept. 6, 2000) (NAB/MSTV 2 GHz Relocation Petition for Reconsideration).

proceedings.<sup>6</sup> Second, in the event that any MSS spectrum in the 1990-2025 MHz band is reallocated or used for terrestrial MSS, BAS incumbents should be relocated together prior to the operation of any new service. Third, the Commission should eliminate or extend the ten-year sunset on relocation compensation obligations that currently allows new entrants to avoid relocation costs by delaying the introduction of service – a strategy that imposes high costs not only on BAS providers but on the public.

**I. A ONE-STEP RELOCATION PLAN IS NOW ESSENTIAL FOR THE ORDERLY CLEARING OF THE 1990-2025 MHZ BAND.**

**A. Spectrum Reallocation Compels A One-Step Relocation Plan.**

In the *Wireless Reallocation MO&O/FNPRM*, the Commission recognized that if it were to reallocate spectrum in the 1990-2025 MHz band for advanced wireless use, “the phased relocation of BAS may not be practical.”<sup>7</sup> Commenters addressing that issue uniformly agree that reallocation, especially of the upper part of the band, would necessitate abandoning the current two-phase, market-staggered approach. For example, New ICO notes that “the reallocation of MSS spectrum such as those frequencies at 2020-2025 MHz could require the relocation of incumbent BAS operations in one step . . . .”<sup>8</sup> A two-phase plan will not work for

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<sup>6</sup> See Comments of the Society of Broadcast Engineers, Inc. in ET Docket No. 00-258, at 2-3 (Oct. 19, 2001) (SBE Comments); Comments of TMI Communications Company, Limited Partnership in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 8 (Oct. 22, 2001) (TMI 00-258 Comments); National Association of Broadcasters and the Association for Maximum Service Television, Inc., Motion for Stay of Mandatory Negotiation Period, ET Docket No. 95-18 (Oct. 22, 2001).

<sup>7</sup> *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New 3G Services, including Third Generation Wireless Systems*, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, ET Docket No. 00-258, FCC 01-224, at ¶ 32 (rel. Aug. 20, 2001) (*Wireless Reallocation MO&O/FNPRM*).

<sup>8</sup> Comments of New ICO Global Communications in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 32 (Oct. 22, 2001) (New ICO 00-258 Comments); see SBE Comments at 1 (continued...)

new entrants that need clear spectrum right away, and it will not work for BAS incumbents that need access to seven channels on a consistent band plan nationwide. As fully described in the Joint Broadcasters' comments, reallocation of the upper end of the 1990-2025 MHz band for advanced wireless use would (1) undermine the justification for the complex two-phase plan, which struck an imperfect compromise between BAS operators requiring a consistent national band-plan and MSS entrants that have high start-up costs and no existing revenue;<sup>9</sup> (2) introduce regional or local services that require spectrum immediately<sup>10</sup> into a band that is being cleared nationally over a fairly long period of time;<sup>11</sup> and (3) provide access to the end of the spectrum

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("The answer [to the question or whether BAS incumbents should be relocated in one step] is a definite 'yes.'"); New ICO 01-185 Comments at 51 ("If [reallocation] were to occur, then indeed there might be a need to revise the relocation rules, depending on the amount of spectrum reallocated."); Comments of the Satellite Communications Division of the Telecommunications Industry Association in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 5 (Oct. 19, 2001) ("Any reallocation of MSS Spectrum will likely require incumbent BAS operators to be relocated simultaneously . . .") (SCD of TIA Comments). Although TMI states that it cannot comment on whether BAS relocation should occur in one step, it does ask the Commission to impose the incremental costs of a one-step move on new entrants. TMI 00-258 Comments at 7-8.

<sup>9</sup> By contrast, the new wireless entrants would almost certainly have existing revenue to fund relocation and enjoy lower start-up costs. Verizon, Cingular, and AT&T Wireless – three of the nation's largest wireless providers – have participated in these proceedings and are likely to seek spectrum reallocated for advanced wireless use.

<sup>10</sup> See, e.g., Comments of the Rural Cellular Association in IB Docket No. 01-185 and ET Docket No. 95-18, at 4-5; Comments of Telephone and Data Systems, Inc. in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 2-3 (Oct. 19, 2001) (citing previous comments).

<sup>11</sup> Accelerating the two-phase relocation would be a senseless waste of resources and enormously disruptive of BAS services. "[B]roadcasters, at considerable time, effort, and expense, [would] convert their 2 GHz BAS operations to Phase I 14.5-MHz wide channels, only to have to quickly repeat that process by implementing Phase II with its 12.1-MHz wide channels." SBE Comments at 1.

band opposite the first MSS entrants, meaning that the phased relocation plan will not free up spectrum for wireless entrants in a reasonable period of time.<sup>12</sup>

**B. Permitting MSS Operators To Commence ATC Operations Requires Adoption Of A One-Step BAS Relocation Plan.**

Arguments for eliminating the phased BAS band relocation plan in the context of a spectrum reallocation apply with equal force to permitting MSS operators the ability to operate ATC wireless services. As noted above, the two-step approach was adopted to avoid requiring MSS operators to pay relocation costs as a capital expenditure. The Commission wanted the service to relocate BAS service in two stages and staggered by market size within stages in order to permit MSS operators to pay relocations costs out of operating expenses.

If adopted, the ATC approach would accelerate the immediate use of this spectrum, thereby eliminating the Commission's original policy concern. MSS operators will be in a position to pay the relocation costs out of the terrestrial service's operating expenses. To the extent these ATC services will be far more profitable than the MSS service, there is no need to stagger the BAS relocation into two stages.

Moreover, there may be significant interference issues with the use of a terrestrial-based ATC system on these frequencies. As we have observed throughout this proceeding, BAS use does not divide neatly along market boundaries. Remote coverage of news and sporting events in adjacent and cross market situations may give rise to interference issues with terrestrial based systems. The Commission has not examined the interference issues in the

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<sup>12</sup> Additionally, the Commission should recognize that even without reallocation, if it follows the suggestions of some commenters to assign MSS spectrum at the top of the spectrum bands first, *see* Comments of Ericsson in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 12-13 (Oct. 19, 2001); Comments of AT&T Wireless Services, Inc. in ET Docket No. 00-258, at 9 (Oct. 22, 2001), that method of spectrum assignment also would render the current two-phase BAS relocation plan unworkable.

context of New ICO's proposed terrestrial wireless system; indeed, New ICO has not provided the technical specifications that would permit the FCC to reach any interference conclusions. Thus, permitting MSS licensees to offer terrestrial wireless services would require that the Commission reexamine the plan for relocating incumbent BAS services.

**C. A One-Step Relocation Plan Will Reduce Transition Costs And Potential Interference.**

The Commission initially concluded that BAS incumbents should be relocated in a single step nationwide.<sup>13</sup> Nonetheless, the Commission ultimately adopted a complex, two-phase, market-staggered plan that is likely to result in the use by BAS incumbents of three different channel plans involving two channel widths for several years.<sup>14</sup> The two-step, phased approach is more costly, because the phased approach requires local stations to make two conversions for their BAS operations.<sup>15</sup> In the end, local stations will have to revise their BAS systems and acquire new digital transmitters and receivers, because existing analog BAS equipment cannot work on the 12.1 MHz wide channels that have been ultimately assigned for BAS use.<sup>16</sup> Therefore, it makes more sense from an economic perspective to fund the relocation costs of one conversion rather than two conversions. The arguments for a single step conversion

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<sup>13</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order, 13 FCC Rcd 23949, 23966 (1998) ("[W]e tentatively conclude that we should require simultaneous retuning or replacement of all BAS equipment nationwide on a date certain.") (2 GHz MO&O/3d NPRM /Order).

<sup>14</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, ET Docket No. 95-18, 15 FCC Rcd. 12315, 12326-27 (2000) (2 GHz Relocation 2d R&O/2d MO&O).

<sup>15</sup> See SBE Comments at 2.

<sup>16</sup> See *id.*

become more compelling given the reallocation and MSS flexibility contemplated in these proceedings.

Moreover, the continued uncertainty about the actual timing of BAS relocation caused by New ICO's failure to reach any relocation agreements to date and the absence of a firm date for beginning Phase II relocations makes it difficult for equipment manufacturers to plan production of new BAS equipment. The added uncertainty caused by these proceedings requires the Commission to revise the relocation plan to provide more specific timetables to allow the needed equipment to be produced.

Even if there were no MSS spectrum reallocation and no flexible use of MSS spectrum, the current two-phase plan would interfere with the coordinated use of BAS channels across market boundaries.<sup>17</sup> As the Commission has noted, "[t]he imposition of rigid geographical boundaries could diminish the flexibility and quality of BAS service."<sup>18</sup> The potential for either a new allocation or terrestrial MSS use exacerbates these problems.

## **II. THE SUNSET PERIOD FOR RELOCATION NEGOTIATIONS MUST BE ELIMINATED TO AVOID "GAMING" THE RELOCATION PAYMENT PROCESS.**

The comments in this proceeding lend support to the Joint Broadcasters' claim that this temporary disruption of BAS services could well become permanent if the Commission retains a ten-year sunset on MSS obligations to relocate BAS operations. This sunset creates a powerful incentive for MSS operators to game the system to avoid compensating BAS

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<sup>17</sup> See NAB/MSTV 2 GHz Relocation Petition for Reconsideration at 4. In arguing against reallocation of MSS spectrum and increasing the complexity of BAS relocation, the Satellite Communications Division of TIA recognizes that the current plan already is "complex." See SCD of TIA Comments at 5; Comments of the Satellite Industry Association in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 5 (Oct. 22, 2001) (same).

<sup>18</sup> *2 GHz Relocation 2d R&O/2d MO&O*, 13 FCC Rcd at 23966.



incumbents.<sup>19</sup> Indeed, New ICO proposes a modification to the Commission's reallocation proposal that is expressly designed to accomplish that result (rather than to promote the public interest in the most efficient and productive use of spectrum). Specifically, New ICO proposes that spectrum in the 1990-2025 MHz band be reallocated only to displaced Federal Government incumbents from the 1755-1850 MHz band because they are unlikely to need the spectrum "until after the 10-year sunset period for BAS relocation and thus will not be required to pay any BAS relocation costs."<sup>20</sup>

The Commission recently reconfirmed its policy of ensuring that incumbent spectrum users should not have to relocate and bear "the additional burden of undue costs."<sup>21</sup> New ICO's comments make clear that its intention is to avoid paying any compensation to many BAS incumbents, particularly incumbents in small markets who are the least able to shoulder these costs. Thus, as part of any reconsideration of the BAS relocation plan, the Commission should eliminate the sunset that New ICO and others seek to exploit to the detriment of BAS incumbents and the public they serve. At a minimum, the Commission should extend the sunset to ten years

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<sup>19</sup> See NAB/MSTV 2 GHz Relocation Petition for Reconsideration at 7.

<sup>20</sup> New ICO 00-258 Comments at 31. New ICO also expresses the hope that such a result might be accomplished even if MSS spectrum is reallocated to the advanced wireless users that have sought it. See *id.* at 35 (footnote omitted) ("Furthermore, if MSS operations and other new entrants do not need to use spectrum at 2008-2025 MHz before the end of the 10-year sunset period, then, consistent with the FCC's existing relocation rules, they will not pay any relocation costs to clear that spectrum."). Globalstar also tacitly recognizes that the ten-year sunset would enable MSS operators to avoid compensating BAS incumbents. See Comments of Globalstar, L.P. in ET Docket Nos. 00-258 & 95-18 and IB Docket No. 99-81, at 11 (Oct. 22, 2001). Alternatively, New ICO argues that any new entrants in the 1990-2025 MHz band should bear the increased relocation costs necessitated by reallocation, while MSS operators should only pay what they would have paid for Phase I relocation. See New ICO 00-258 Comments at 34-35.

<sup>21</sup> *Redesignation of the 17.7-19.7 GHz Frequency Band*, First Order on Reconsideration, IB Docket No. 98-172, FCC 01-323, at ¶ 75 (rel. Nov. 1, 2001).

after the start of any second relocation phase or the entry of new entrants into the BAS relocation negotiations.

### **III. THE COMMISSION MUST CONSIDER THE POTENTIAL FOR INTERFERENCE.**

We agree with the SBE that the reallocation of this spectrum for terrestrial wireless service will require the Commission to adopt specific interference parameters.<sup>22</sup> The same concerns would apply to proposed ATC use by current MSS licensees. There are concerns with adjacent channel and brute force overload problems. Nonetheless, until these new actual services are authorized, we believe it is too soon to adopt specific interference standards. Such standards should be imposed once the Commission determines the exact services that will be permitted to operate using 2 GHz spectrum.

### **CONCLUSION**

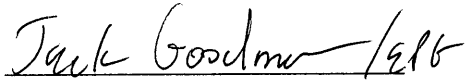
The uncertainty engendered by the Commission's consideration of the spectrum flexibility proposals, as reflected in the comments, has disrupted the current BAS relocation process. The Commission should toll the entire BAS relocation process pending resolution of the proposals considered in these proceedings. Should the Commission decide to reallocate spectrum for advanced wireless use or to permit MSS terrestrial use, the comments support revising the current BAS relocation plan to provide for one-step relocation of BAS incumbents in all markets at one time. In any event, the Commission should eliminate or extend the ten-year sunset on MSS relocation obligations now that MSS comments make clear that MSS operators intend to use the sunset to avoid fairly compensating broadcasters.

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<sup>22</sup> See SBE Comments at 3-4.

Respectfully submitted,

NATIONAL ASSOCIATION  
OF BROADCASTERS



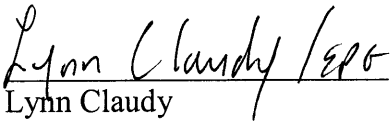
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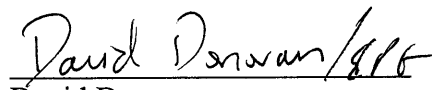


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